



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
CHAD SIMMONS,

Petitioner,

- against -

R. MCGINNIS, Superintendent,  
Southport Correctional Facility,

Respondent.  
-----X

:  
: 04 Civ. 6150 (PAC) (DF)

: OPINION & ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

Petitioner Chad Simmons ("Simmons") seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his October 1998 conviction and March 1999 sentence, following a jury trial, for four counts of Robbery in the First Degree and two counts of Robbery in the Second Degree. Simmons asserts two claims for relief from his conviction: (1) that his identity as one of the perpetrators of the robbery was not proven beyond a reasonable doubt; and (2) that the sentence imposed is excessive in comparison to that of his co-defendant.

This case was referred to United States Magistrate Judge Debra Freeman, who issued her Report and Recommendation ("R&R") on November 22, 2006, recommending the denial of Simmons's Petition. The Magistrate Judge provided ten days for written objections, pursuant to Federal Rule of Civil Procedure 72(b), and specifically advised that the failure to file objections "will result in a waiver of objections and will preclude appellate review" (R&R 24). No objections have been filed.

### DISCUSSION

“To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). As described more completely in the R&R, Simmons has not shown that his conviction and sentence were contrary to, or an unreasonable application of, clearly established federal law. See 28 U.S.C. § 2254(d). The Court agrees with Magistrate Judge Freeman’s determination that neither Simmons’s conviction nor his sentence violated the Constitution or laws of the United States, and finds no error in Magistrate Judge Freeman’s report. Accordingly, the Court accepts and adopts the Report and Recommendation as its opinion, and denies Simmons’s petition for a writ of habeas corpus.

I decline to issue a certificate of appealability pursuant to 28 U.S.C. § 2253(c)(2). The petitioner has not made a substantial showing of a denial of a federal right, and appellate review is therefore not warranted. Further, Simmons did not file objections to the Report and Recommendation, as he was required to do in order to preserve his right to appeal. Pursuant to 28 U.S.C. § 1915(a), I also find that any appeal from this order would not be taken in good faith. The Clerk of the Court is directed to close out this case.

Dated: New York, New York  
December 19, 2006

SO ORDERED



PAUL A. CROTTY  
United States District Judge